

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Truth-in-Billing and Billing Format

CC Docket No. 98-170

National Association of State Utility
Consumer Advocates' Petition for
Declaratory Ruling Regarding Truth-in-
Billing

CG Docket No. 04-208

**REPLY COMMENTS OF THE PEOPLE OF THE STATE
OF CALIFORNIA AND THE CALIFORNIA
PUBLIC UTILITIES COMMISSION**

DATE: July 25, 2005

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The People of the State of California and the California Public Utilities Commission (“California” or “CPUC”) hereby submit these reply comments in response to the Second Further Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC”) in the above-referenced dockets, in its March 18, 2005 *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking* (“March 18 Order”).

On March 18, 2005, following the receipt of comments by numerous entities, including the CPUC, the FCC issued a ruling in these dockets, declaring that state regulations requiring or prohibiting the use of line items are preempted by federal law. At the same time, the FCC issued a Second Notice of Proposed Rulemaking (“NPRM”), seeking comment regarding how a uniform federal policy regarding line items relating to government-mandated charges should be implemented, as well as other issues flowing from the March 18 Declaratory Ruling.

I. Line items regarding government mandated charges on bills

As regards regulation of specific line items on bills as they relate to government mandated versus non-government mandated charges, the CPUC supports the FCC’s proposal to promulgate a uniform federal rule and preempt state regulation of line items on bills. In particular, the CPUC supports the FCC’s proposal under which:

[The FCC will] define government “mandated” charges as amounts that a carrier is *required* to collect directly from customers, and remit to federal, state or local governments[.]

Under this definition, some examples of mandated charges would include state and local taxes, federal excise taxes on communication services, and some state E911 fees. Non-mandated charges then could be defined as comprised of government authorized but discretionary fees, which a carrier must remit pursuant to regulatory action but over which the carrier has discretion whether and how to pass on the charge to the consumer.

March 18 Order ¶ 40. As the FCC has noted, this proposal is consistent not only with the FCC's own precedent, but also with the recent settlement entered into between Attorneys General from 32 states and Verizon Wireless, Cingular Wireless, and Sprint PCS ("AG/Carrier Settlement"). *Id.* In light of the FCC's findings in the March 18 Order that there has been an increase in complaints regarding wireless billing & rates and marketing & advertising, and demonstrable "consumer confusion and dissatisfaction with current billing practices," the CPUC believes that implementation of a uniform federal requirement is justifiable, and promotes the goals underlying the FCC's truth in billing rules. Comments filed by numerous other entities, as diverse as, for example, both Nextel Communications, Inc. and the National Association of State Utility Consumer Advocates, detail the benefits of the rule the FCC proposes, and the CPUC will refrain from repeating those here.

The FCC also seeks comment on its tentative conclusion that it should require that government mandated charges be segregated as line items in a separate section of bills.

For reasons similar to those noted above, the CPUC supports this conclusion as well. In particular a regularization of how these charges are presented and the clear demarcation between government mandated charges and other charges will decrease customer confusion, enhance the ability of consumers to compare various service offerings and generally promote competition.

Finally, the FCC seeks comment on whether it should require uniform labeling (named categories) for various charges on bills (e.g., “regulatory expenses”), and, if so, what those categories should comprise. The CPUC believes that this requirement is an integral part of the FCC’s proposal to segregate government mandated and non-mandated charges, and supports the FCC’s efforts to promulgate such uniform categories. Again, the CPUC supports efforts by the FCC to make it easier for consumers to understand their bills and make it easier for consumers to make comparisons across service providers.

II. Line items for federal regulatory charges

The FCC seeks comment on whether it should allow or prohibit carriers to combine all federal regulatory charges in a single line item on bills. The CPUC shares the FCC’s concern that allowing such combination allows carriers to bury costs in lump figures. *See* March 18 Order ¶ 48. Accordingly, in the interest of providing the most accurate information to consumers, the CPUC supports the FCC’s position that such charges should be listed separately. Further, itemization allows all involved to fully understand the bill impacts of the various regulatory programs underlying such regulatory charges.

III. Point of sale disclosures

In the NPRM, the FCC seeks comments on its tentative conclusion that, “carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale.”

Order ¶¶ 55-56. The FCC notes that this conclusion is consistent with the AG/Carrier settlement, noted above. For this reason, and because the FCC’s conclusion is consistent with the goal of providing consumers with full and accurate information in a timely manner, the CPUC supports the FCC’s conclusion and proposal. Also, the CPUC supports the FCC tentative conclusion because it will enhance the ability of customers to make direct comparisons of the various service offerings offered by the competing providers and find the one that best meets their needs at the best price.

IV. State enforcement of FCC rules

The FCC also seeks comment on whether it “should adopt an enforcement regime where states are permitted to enforce rules developed by the Commission.” Order ¶ 51. As the CPUC understands it, this regime would be a dual regime, so consumers have the option of filing complaints either with states or with the FCC, as is the case with the FCC’s current slamming rules. *Id.*

The CPUC believes that the dual enforcement regime for the FCC’s slamming rules is a model that works well and would be a good model for enforcement of federal rules related to billing. Allowing states to enforce FCC rules plays to states’ strengths at enforcement, as the primary point of contact for customers; it also allows states to exercise their police powers. State Public Utilities Commissions interact with consumers

on a wide variety of complaints regarding telecommunications services, including those that relate to billing. Enforcement of federal rules related to billing would be a natural outgrowth of the existing role that states play as the major “intake” point for consumer complaints. Additionally, State Commissions already have in place complaint resolution processes, both informal as well as formal, to resolve such complaints. To the extent that such a regime would truly be dual – so that enforcement authority will not lie exclusively either only with the states or the FCC – the CPUC supports the FCC’s proposal. Once more, this proposal promotes the goals underlying the FCC’s truth in billing rules, by providing consumers with a robust enforcement regime, and a local entity to which to turn when they have a complaint or other problems.

V. Further preemption of state regulation

Finally, the NPRM seeks comment on a variety of proposals and theories as to whether the FCC should further preempt state regulatory authority beyond the March 18 Order’s declaration prohibiting states from requiring or prohibiting specific line items on bills. *See* March 18 Order ¶¶ 49-54. Although the CPUC supports the FCC’s efforts to implement the nationally uniform line-item regulations discussed above, the CPUC is not prepared at this time to take a definitive position regarding the FCC’s proposals for further preemption of state authority.

The CPUC will evaluate any further proposed rules regarding billing practices from the FCC before deciding its views on the appropriate role of states. The CPUC has reviewed the FCC’s line item regulations and supports a uniform national implementation of these rules. To the extent that the FCC issues additional billing rules on billing

practices, the CPUC will at that time evaluate the suggested rules before deciding its views on the appropriate role of the states.

The CPUC respectfully requests permission to file further comments on the issue of further preemption at such time as the FCC may issue further detailed proposed rules concerning billing practices.

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